Award No. 4758
Docket No. MW-4554

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GALVESTON WHARVES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the agreement during the period August 1, 1945 to January 12, 1946 by assigning Laborer Arthur Woods to work as a Water Service Helper and paying him at laborer's rate;

(2) That Laborer Arthur Woods be allowed the difference in pay received at laborer's rate of pay and what he should have received at Water Service Helper's rate during the period August 1, 1945 to January 12, 1946, inclusive.

EMPLOYES STATEMENT OF FACTS: Arthur Woods is a regularly assigned laborer in the B&B Department. However, during the period August 1, 1945 until January 12, 1946, Arthur Woods was assigned and did work as a helper to the plumber in the Water Service Department. We quote below a letter addressed to Mr. R. M. Lindsay, General Supervisor, dated January 16, 1946 and signed by Arthur Woods:

"Galveston Texas
Jan. 16, 1946

Galveston Wharves.
Mr. R. M. Linsday
Genl. Supervisor

Dear Sir:

On Aug. 1st 1945 I was helping the plumber in the water service dept. Until Jan. 12th, 1946 using dies, wrenches, hammers, and pipe cutting tools and helping fit and repair broken water pipes, etc. at a labourer rate of pay which is 65c per hour. Refere to article 34—page 13—laborers are not permitted to perform work with mehanic-tools. I am claiming 4c per hour difference in a laborer rate of pay than that of a helpers, rate of pay which is 69c per hour from Aug. 1st, 1945 to Jan. 2th, 1946. Refer to article #26 rule #1 page #11.

Yours Very Truly

Arthur Woods"

During this period August 1, 1945 until January 12, 1946, laborer Arthur Woods was compensated only at his regular rate of pay. The difference between the laborer's rate of pay and the water service helper's rate of pay was four

Employes and that it is an agency of the City of Galveston, that its operations are controlled by the laws of Texas, and that these laws forbid us to enter into a bargaining agreement with a labor organization. The Galveston Wharves has shown that the claim presented by Arthur Woods in 1946 was vague and indefinite and that it was not handled in the manner set out in the Railway Labor Act. It has shown that Arthur Woods was paid the regular rate of pay for laborer and that there was no such position as water service or plumber helper in the Agreement that existed at the time the Galveston Wharves began operation of the railroad.

The Galveston Wharves respectfully requests an opportunity to appear before the Board in oral hearing and make such answer to the Organization's submission in this case as may be deemed proper.

Whereas, in consideration of the facts, applicable laws of the State of Texas, and decisions of your Honorable Board in similar disputes, the Galveston Wharves urges that the claim by the Organization in behalf of Arthur Woods be, in all things, denied.

(Exhibits not reproduced).

OPINION OF BOARD: The Carrier makes the same challenge to the validity of the Agreement in question and the jurisdiction of the Board as it did in Award No. 4756. Our findings as to jurisdiction in that Award will apply here. The Carrier also urged the same defense of laches in the prosecution of this claim, and for the reasons set forth in said Award No. 4756 that defense will also be overruled in this case.

The parties are in complete disagreement in respect to the controlling facts of this claim. The Employes state that Claimant was a regularly assigned Laborer in the Bridge and Building Department, and during the time in question was assigned and did work as a helper to the plumber in the Water Service Department; that he used dies, wrenches, hammers and pipe cutting tools, and helped fit and repair broken water pipes; that by reason of this work he is entitled to the water service helper's pay, which is four cents per hour greater than the rates he was paid as a Laborer.

The Carrier states that when the claim was made on the property it was investigated and it developed that Claimant had not used any of the tools alleged to have been used by him, but on the contrary, that he only did laborer's work, helping in the Fire Prevention Department.

The claim is predicated upon Carrier's violation of Article XXV (Composite Service Rule) of the Agreement. Therefore, the principal issue is whether the Claimant did in fact perform the work of a higher rated position during the time in question. The only evidence before the Board that the Claimant did perform work of a higher rated position is the statement of Claimant to that effect, and the Carrier denies that statement. The Employes in the Water Service Department are not listed as positions covered by the Agreement in question, and the record does not indicate if the helpers' rate is the lowest rate in that Department, or if laborers are also assigned to the Water Service Department. Thus we find that the entire claim is based upon the statement of Claimant, which is denied in toto by Carrier, and there is no evidence in the record, documentary or otherwise, of a substantial nature upon which to base a dependable Award.

The Composite Service Rule states that while the employe performs work of the higher rated position he will receive the higher rate. It must be shown that the work was in fact done on a higher rated position for this claim to be sustained, and such a showing is lacking here.

In a companion case, involving the same parties, Award No. 4757 we held that the Carrier had violated the Composite Service Rule. In that case, however. the employes made definite proof that the Claimant was assigned to the Pile Driver gang and worked as a member of that gang; that even though he did laborer's work, the lowest rate of pay in the gang was Pile

Driver man. There we held Claimant was entitled to that higher rate of pay. There is no such proof in the instant case.

The Claimant in coming before this Board assumes the burden of presenting a theory which, when supported by the facts, will entitle him to prevail. The Board cannot accept the burden of finding a reason to grant relief when the Claimant fails to make out a case. See Awards Nos. 4011, 3523, 3477, 2577.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That there was no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1950.